

allow the government to win a conviction for harm to an unborn child only if it first proves that the defendant violated one of the 70 or so enumerated federal laws with respect to the mother.

Some opponents of the bill have charged that it would allow defendants to be convicted without a showing of intent to do harm. This is false. Under the bill, it is necessary to prove beyond a reasonable doubt that a defendant had intent to do criminal harm, at least towards the mother. If such criminal intent towards the mother is proved, then the defendant also will be held responsible for the harm done to the unborn baby, under the doctrine of "transferred intent." As the House Judiciary Committee report (106th Congress) explained, transferred intent is a well-established principle in the law. (If a man shoots at a woman with intent to kill, and the bullet misses her, passes through a wall, and kills a child who the shooter did not know was there, he can be convicted of the murder of the child.) As the Minnesota Supreme Court ruled in upholding the Minnesota unborn victims law, "The possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude." [State v. Merrill, 450 N.W. 2d 318 (Minn. 1990)].

In order to win a conviction under the bill, it would be necessary for the prosecution to prove beyond a reasonable doubt that a human being (1) already existed, and (2) was "carried in the womb," which would be utterly impossible until after the embryo had implanted in the womb and sent out the chemical signals that announced his or her presence (i.e., after implantation). Moreover, even after the prosecution has met that burden, it must also prove beyond a reasonable doubt that a defendant's criminal conduct caused the death of the child in utero. The mere possibility or even the strong likelihood that a defendant's criminal conduct caused a baby's death would not suffice—the bill requires proof beyond a reasonable doubt.

National Right to Life legislative staff are available to discuss this issue with journalists and congressional offices. Please call (202) 626-8820, or e-mail to: Legfederal@aol.com. Extensive additional information on the federal bill and on state unborn victims laws is available at the NRLC website at www.nrlc.org/Unborn_Victims/index.html.

AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore (Mr. LATOURETTE). The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Ms. LOFGREN:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Motherhood Protection Act of 2001".

SEC. 2. CRIMES AGAINST A WOMAN—TERMINATING HER PREGNANCY.

(a) Whoever engages in any violent or assaultive conduct against a pregnant woman resulting in the conviction of the person so engaging for a violation of any of the provisions of law set forth in subsection (c), and thereby causes an interruption to the normal course of the pregnancy resulting in prenatal injury (including termination of

the pregnancy), shall, in addition to any penalty imposed for the violation, be punished as provided in subsection (b).

(b) The punishment for a violation of subsection (a) is—

(1) if the relevant provision of law set forth in subsection (c) is set forth in paragraph (1), (2), or (3) of that subsection, a fine under title 18, United States Code, or imprisonment for not more than 20 years, or both, but if the interruption terminates the pregnancy, a fine under title 18, United States Code, or imprisonment for any term of years or for life, or both; and

(2) if the relevant provision of law is set forth in subsection (c)(4), the punishment shall be such punishment (other than the death penalty) as the court martial may direct.

(c) The provisions of law referred to in subsection (a) are the following:

(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), (f), (h)(1), and (i), 934(j), 930, 1111, 1112, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203(a), 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952(a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of title 18, United States Code.

(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848).

(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

(4) Sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of title 10, United States Code (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

The SPEAKER pro tempore. Pursuant to House Resolution 119, the gentleman from California (Ms. LOFGREN) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume.

This debate this morning has been interesting, but I think it is clear, and we need to be honest about it, that the debate and the underlying bill is about choice and it is about Roe v. Wade. That is why the National Right to Life Committee has vigorously lobbied for H.R. 503 and why the National Coalition Against Domestic Violence has lobbied actively against 503.

What we are doing here today is offering a substitute that we hope can bring both sides of the choice to come together in unity to protect pregnant women from violent assault when that assault injures or terminates their pregnancy.

The Lofgren-Conyers substitute does not threaten Roe v. Wade as the underlying bill does. I have heard a lot of the arguments made here this morning, but I think it is worth pointing out that redefining personhood legislatively for the purposes of the 14th amendment in this criminal statute may have the impact of allowing, even though certain activities are carved out of the bill, for prosecutorial purposes, it does not deal with civil actions.

Clearly the bill could outline the ability for guardians to be appointed for fetuses or even zygotes, and that civil action and injunctions could be

based upon this bill. The Lofgren-Conyers substitute does not do that. We do not needlessly inject the abortion debate into the matter of criminal justice. This bill focuses on the harm to the pregnant woman and provides, we hope, a deterrence of violence against women and provides very tough penalties when that violence results in injury to the fetus or a miscarriage.

This bill is tougher, this substitute is tougher than the underlying bill; and I will give my colleagues just an example of how that would work. Each of the measures, both the underlying bill and the substitute, recites various Federal criminal laws as jurisdictional offenses. One of the sections, one of the predicate offenses is section 248 of Title 18, which provides for a scheme to deter violence against women and others who are entering clinics, health clinics.

Now, in my part of California, Planned Parenthood provides extensive health care services. They provide prenatal care, pediatric care, and the like. If a pregnant woman is trying to enter the Planned Parenthood clinic through the protesters in San Jose to get her prenatal care and is assaulted by one of the protesters and miscarries, under the H.R. 503, there would need to be proven an intent to cause that miscarriage or in the language of the bill kill the unborn child.

Under the Lofgren substitute, no such requirement is in place. If a miscarriage occurred, the full sentence of up to a life sentence could be imposed. In the case of the underlying bill, the maximum sentence that could be imposed without proving intent, which is very difficult to do, would be 1 year or, if bodily injury was not afflicted on the woman, it would be 10 years.

So we have a difference really with the substitute providing up to a life sentence and the underlying bill merely 1 or 10 years. I think that those of us who want to give a strong message to those who would assault women would prefer the life sentence.

This is stronger as well because it is constitutional unlike the underlying bill. I recently reread Roe v. Wade, something that I think all of us should do from time to time. Some of us had not read it since law school. It was good to be reminded in the language of the Justices, their consideration, first of the personhood of the fetus, but also the discussion of what can be regulated and when.

Clearly, and we all know this as people, the horrible situation of the woman who was assaulted, and she was 4 days away from delivery, and I do not want to get into the personhood argument, but she could have induced labor. She lost her child in my view, and that was a tragedy. Our bill would protect that. But it also protects something else. If one is 6 weeks pregnant, the substitute that we are offering provides the same level of protection as the poor woman who was assaulted in the picture that has been used several times today.